IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.5717 OF 2003 AND WRIT PETITION NO. 5718 OF 2003

M. Manimegalai .. Petitioner in WP.5717/2003

S. Maruthachalam .. Petitioner in WP.5718/2003

-VS-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development,
Fort St. George,
Chennai 9.

2. The Managing Director,
Tamil Nadu Housing Board,
331, Anna Salai, Nandanam,
Chennai 35. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.T.R. Senthilkumar

For Respondents : Mr.N.R. Chandran
Advocate General for
Mr.D. Veerasekaran (TNHB)

Mr.S. Gomathinayagam
Special Govt. Pleader

:O R D E R

Heard the learned counsels appearing for the parties. Petitioners are the owners of certain properties in Kallapatti Village, Coimbatore District. Notification under Section 4(1) of the Land Acquisition Act, (hereinafter called the Act) was published in the Gazette dated 2 7.3.1991. The land was being acquired for neighborhood scheme for and on behalf of the Tamil Nadu Housing Board, the second respondent. The petitioners had filed objections. Subsequently, declaration under Section 6 had been published. In March 1994,

the petitioners received notice under Section 9(3) of the Act. At that stage, the petitioners filed separate writ petitions challenging the acquisition. A learned single Judge of this Court, while dismissing the aforesaid writ petitions observed :

" . . . However it is open to the petitioners to make a representation before the concerned authority within a period of three months from the date of receipt of a copy of this order, for exclusion of their lands from acquisition. If such representation is made by the petitioners, the concerned authority shall consider and dispose of the same on merits, within a period of six months thereafter. Till such time, status quo shall continue."

2. On the basis of the aforesaid observation, the petitioners filed representation dated 16.8.2001 purported to be under Section 48-B of the Act for reconveyance of the lands. Since no orders had been passed, the petitioners filed W.P.Nos.9780 & 9781 of 2002, which were dismissed. The petitioners filed Writ Appeal Nos.1465 and 1466 of 200 2, which were disposed of with a direction to the Government to consider and dispose of the representation dated 16.8.2001 and pass appropriate orders in accordance with law. However, since no orders had been passed, these writ petitions have been filed with a prayer to issue writ of mandamus directing the respondents to reconvey the lands.

3. It is unfortunate that in spite of the specific direction of this Court, the respondents did not dispose of the representation dated 16.8.2001.

4. Since certain questions have been raised relating to interpretation of Section 48-B and other related provisions, the matter has been heard at length.

5. Section 48-B, which was introduced by way of State Amendment, is to the following effect :-

"48-B "Transfer of land to original owner in certain cases.- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

6. A perusal of the aforesaid provision makes it clear that power has been given to reconvey the land acquired under the Land Acquisition Act and vested with the Government to the original owner subject to certain conditions relating to repayment of the compensation. It has to be noticed that Section 48-B would be applicable in respect of lands which are vested in the Government. Where, however, the lands are not vested with the Government, obviously the Government would have no power to reconvey such land.

7. It is the contention of the learned counsels appearing for

the State as well as the Board that in the present case, the land had been acquired for the Housing Board and on deposit of compensation amount such land has been vested with the Housing Board. This is more particularly so by virtue of the provisions contained in Sections 16 and 17-A, which are extracted hereunder :-

 16. Power to take possession. - When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17-A Transfer of land to Board. - In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition.

8. So long as such lands remain vested with the Board, obviously power under Section 48-B cannot be exercised by the Government. Where the lands have been acquired for a particular purpose by some other authority or company and such lands have not been used, the Government has power to forfeit such land under Section 16-B of the Act, which is to the following effect :-

 16-B. Land to be forfeited in certain cases. - Where the Government are satisfied that the land acquired under this Act for any public purpose as referred to in sub-section(1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances:

Provided that no order under this section, shall be made unless the person or authority aggrieved has had a reasonable opportunity of being heard.

9. Before passing any order of forfeiture, of course, the Government has to issue notice to the authority or the company concerned. These amendments to the Central Act were effected under the State Amendment Act,1996 (XVI of 1997). It is obvious that all these provisions have to be read together. From the aforesaid provisions it is apparent that where the land is acquired for Housing Board, the Government has the power to forfeit and on such forfeiture, the property again vests with the Government free from all encumbrances. At that stage, it would be open to the Government to deal with the land in accordance with the provisions contained in the Land Acquisition Act including Section 48-B.

10. A contention was raised by the learned counsel appearing for the State that before action is taken under Section 16B, an application for reconveyance of the land under Section 48-B is not contemplated. Even though such a contention may appear to be attractive on the face of it, on a closer scrutiny, I am unable to accept such a contention. As already

indicated, all these amendments were introduced under the State Act at the same time. Section 48-B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilised. Such provision is a benevolent provision. Even though it is not specifically indicated in Section 4 8-B regarding the right of such a person to file application, it is obvious that such a person has to indicate his willingness to get the land back subject to repayment of the compensation. Therefore, Such a person can always indicate his willingness by filing a representation. Where the land is acquired by the Government for itself, obviously the land remains vested with the Government. Similarly, where the land is acquired for any other authority or company, until action is taken under Section 16B of the Act, the land does not get re-vested in the Government. Therefore, where the land is acquired for an authority or a company and it is not used by such authority, such nonutilization is required to be brought to the notice of the Government so that the Government can initiate appropriate proceedings under Section 16-B of the Act. In all such cases where the land is acquired for a company or any other authority, an affected person can make a representation so that the Government can consider the question of forfeiture of such land under Section 16-B and thereafter take action under Section 48-B, if the facts and circumstances so warrant.

11. Having regard to all these aspects, the writ petitions are disposed of with the following directions :-
(1) The State Government has to consider whether any action is required to be taken under Section 16-B of the Act.

(2) If the Government takes a decision to forfeit the land under section 16-B of the Act, thereafter the Government has to consider further whether the land should be reconveyed to the persons affected in accordance with Section 48-B of the Act.

(3) Appropriate decision in the matter should be taken within a period of four months from the date of receipt of a copy of the order.

(4) Any decision taken should be communicated to the petitioners.

12. In the result, the writ petitions are disposed of with the above directions. No costs.

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To

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Rep. by its Secretary,
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